

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DEREK FOLLEY,	:	
	:	
Petitioner,	:	
	:	Case No. 3:22-cv-65
v.	:	
	:	District Judge Thomas M. Rose
KEITH J. FOLEY, Warden,	:	
	:	Magistrate Judge Michael R. Merz
Respondent.	:	

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**ENTRY AND ORDER OVERRULING OBJECTIONS TO REPORTS AND  
RECOMMENDATIONS (DOC. NO. 252 AND DOC. NO. 253); ACCEPTING  
AND ADOPTING THE MAGISTRATE JUDGE’S REPORTS AND  
RECOMMENDATIONS (DOC. NO. 249 AND DOC. NO. 251); DENYING  
PETITIONER’S MOTION TO REOPEN BASE[D] UPON ABUSE OF  
DISCRETION OF U.S. MAGISTRATE JUDGE MERZ (DOC. NO. 248); AND,  
DENYING PETITIONER’S MOTION TO REOPEN BASE[D] UPON ABUSE OF  
DISCRETION OF U.S. DISTRICT JUDGE ROSE**

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This 28 U.S.C. § 2254 *habeas corpus* case is before the Court on two sets of objections to reports and recommendations issued by the magistrate judge. As explained below, the Court overrules the objections, accepts and adopts the reports and recommendations, and denies the two pending motions.

On November 29, 2022, the undersigned issued an order that directed entry of judgment in this case, and the Clerk of Court entered Judgment that same day. (Doc. No. 217; Doc. No. 218.) On December 12, 2022, Petitioner, Derek Folley, (“Petitioner”) filed a Notice of Appeal. (Doc. No. 229.) The Sixth Circuit docketed the appeal as Case No. 22-4041. (Doc. No. 232.)

On February 6, 2023, Petitioner filed, in this case, a “Motion to Reopen Base[d] Upon Abuse of Discretion of U.S. Magistrate Judge Merz.” (Doc. No. 248.) On February 9, 2023,

Petitioner filed, also in this case, a “Motion to Reopen Base[d] Upon Abuse of Discretion of U.S. District Judge Rose.” (Doc. No. 250.) Magistrate Judge Michael R. Merz issued a report and recommendations for each of the two motions. (Doc. No. 249; Doc. No. 251.) Petitioner’s motions argue that Judge Merz and the undersigned had “personal knowledge of disputed evidentiary facts concerning this proceeding.” (*Id.*) Judge Merz recommended that the two motions be denied because they are without merit. (*Id.*) He explained that “[t]he fact that a judicial officer has knowledge that a litigant **alleges** certain facts are true does not mean that judge has ‘personal knowledge’ of those facts,” and he further explained that neither he nor the undersigned have personal knowledge concerning the facts of Petitioner’s speedy trial claim. (*Id.* (emphasis in original).) Judge Merz also noted that, despite the pending appeal, Federal Rule of Civil Procedure 62.1 allows this Court to (1) defer considering the motions; (2) deny the motions; or (3) state either that it would grant one or both of the motions if the court of appeals remands for that purpose or that one or both of the motions raise a substantial issue. (*Id.*)

Petitioner filed objections to each of the reports and recommendations. (Doc. No. 252; Doc. No. 253.) In his objections, Petitioner reasserts the argument he made in his two motions. (*Id.*) In addition, Petitioner improperly raises new arguments that he did not make in either of the two motions. *Murr v. U.S.*, 200 F.3d 895, 902 n. 1 (6th Cir. 2000) (“while the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate”).

In accordance with 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that

Petitioner's objections to the reports and recommendations are not well taken, and they are **OVERRULED**. The Court **ACCEPTS** and **ADOPTS** both reports and recommendations (Doc.

No. 249 and Doc. No. 251) in their entirety and rules as follows:

1. The Court **DENIES** the Petitioner's Motion to Reopen Base[d] Upon Abuse of Discretion of U.S. Magistrate Judge Merz (Doc. No. 248); and,
2. The Court **DENIES** the Petitioner's Motion to Reopen Base[d] Upon Abuse of Discretion of U.S. District Judge Rose (Doc. No. 250).

**DONE** and **ORDERED** in Dayton, Ohio, this Wednesday, March 1, 2023.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE